



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 10/15/02
AGENDA ITEM 5
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: City Attorney
SUBJECT: Campaign Contribution Limits

RECOMMENDATION:

It is recommended that the City Council introduce the attached ordinance amending the Hayward Municipal Code to provide for limits on campaign contributions.

BACKGROUND:

At its meeting of September 24th, the Council considered a proposal from the CASH organization to establish a voluntary expenditure limit and campaign contribution limits for candidates for elected office in Hayward. After review and discussion of the subject, staff was directed to make the modifications necessary to allow for the re-adoption of the campaign contribution ordinance (hereafter Ordinance) previously approved by the Council in 1997. The 1997 Ordinance established a voluntary expenditure limit of fifty thousand dollars \$50,000 per candidate per election. It also provided a contribution limitation of \$500 per donor per election for candidates who accepted the spending limitation and a limitation of \$250 per donor per election for those candidates who did not accept the spending limitation.

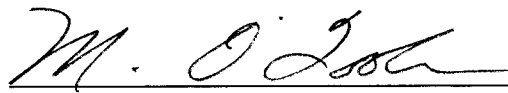
The attached Ordinance re-codifies Chapter 2, Article 13 of the Hayward Municipal Code thereby establishing voluntary campaign expenditure limits and contribution limitations for Hayward Municipal Elections. Specifically, the Ordinance establishes an initial voluntary expenditure limit of \$50,000 per candidate per election. Beginning January 1, 2004, the \$50,000 limit will be adjusted annually for inflation by a percentage equal to the last annual increase in the San Francisco Bay Area All Urban Consumer Price Index (CPI). The adjusted expenditure limit will be posted in a visible place in City Clerk's Office. The Ordinance also establishes two campaign contribution limits. Pursuant to direction of Council, a one thousand dollar (\$1,000) limit per donor per election has been established for candidates who accept the voluntary expenditure limit while a two hundred and fifty dollar (\$250) limit has been established for those who do not agree to the expenditure limitation.

The Ordinance provides for criminal, civil and administrative penalties in the event of violations. Since, violations of the Ordinance are deemed to be misdemeanors, they carry a penalty of up to one thousand dollars (\$1000). In addition, the Ordinance provides that a civil or administrative penalty of up to (\$1000) may be imposed for each violation. To comply with the requirements of due process, the ordinance contains provisions requiring that notice of violations be given and a hearing be conducted prior to the imposition of an administrative penalty. Since the City Clerk is designated as the official responsible for conducting municipal elections, the process is initiated when evidence of a potential violation is presented to his/her Office. The Clerk is then required to meet with the City Attorney to determine if probable cause exists to either forward the matter to the District Attorney for criminal prosecution or appoint independent counsel to serve as a hearing officer. If a hearing officer is appointed, all proceedings will be conducted pursuant to the Administrative Procedures Act contained in the Government Code.

CONCLUSION:

In conclusion, the attached Ordinance represents a re-codification of the contribution and spending limitations previously adopted by the Council in 1997. If the Council desires, it may introduce the Ordinance.

Prepared by:



Michael O'Toole, City Attorney

Approved by:



Jesús Armas, City Manager

Attachment: Draft Ordinance

DRAFT

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2 ARTICLE 13 OF
THE HAYWARD MUNICIPAL CODE RELATING TO THE
ESTABLISHMENT OF CONTRIBUTION LIMITATIONS AND
A VOLUNTARY CAMPAIGN EXPENDITURE LIMIT FOR
ELECTIONS TO CITY OFFICES

WHEREAS, monetary contributions to political campaigns are a legitimate form of participation in the political process, but the financial strength of individuals or organizations should not permit them to exercise a controlling influence on the election of a candidate; and

WHEREAS, the rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters before state and local government; and

WHEREAS, the Council finds that the adoption of a campaign finance reform ordinance will help ensure that individuals and interest groups will have a fair and equitable opportunity to participate in the elective and governmental processes, minimize the appearance of corruption caused by excessive contributions and expenditures in campaigns and provide impartial and noncoercive incentives to encourage candidates to voluntarily limit campaign expenditures.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD
DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 2, Article 13, of the Hayward Municipal Code is hereby repealed and replaced by the following to read in full as follows:

“ARTICLE 13

SEC. 2-13.00. VOLUNTARY EXPENDITURE LIMITS FOR CAMPAIGNS
FOR CITY ELECTIVE OFFICES.

- (a) A voluntary expenditure limit of \$50,000 per candidate is hereby established for each election to City elective office. As used in this section, the term “City elective office” shall mean the offices of Members of the City Council and Mayor. Beginning January 1, 2004, the amount established by this section shall

be adjusted by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the expenditure limit in a visible place in the City Clerk's Office.

- (b) Prior to accepting any contribution for a campaign, each candidate for City elective office shall file with the Hayward City Clerk statement of acceptance or rejection of the voluntary expenditure limit established herein with regard to that campaign.
- (c) No candidate for City elective office who accepts the voluntary expenditure limit established herein and no controlled campaign committee of such a candidate shall make campaign expenditures cumulatively in excess of the voluntary expenditure limit established herein.
- (d) Each candidate for City elective office who rejects the voluntary expenditure limit established herein shall be subject to the contribution limit set forth in Section 2-13.01 of this Article as that section may be amended from time to time.
- (e) Each candidate for City elective office who accepts the voluntary expenditure limit established herein shall be subject to the contribution limit set forth in Section 2-13.02 of this Article as that section may be amended from time to time.

SEC. 2-13.01 LIMITATION OF CONTRIBUTIONS.

- (a) Except as provided hereafter in Section 2-13.02 of this Article, no person shall make to any candidate for City elective office, or the candidate's controlled committee, a contribution or contributions totaling more than two hundred and fifty dollars (\$250) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- (b) Except as provided hereafter in Section 2-13.02 of this Article, no candidate running for City elective office, or the candidate's controlled committee, shall accept a contribution or contributions totaling more than two hundred and fifty dollars (\$250) per contributor for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- (c) For the purposes of this section and section 2-13.02 the term person shall include corporations, businesses, partnerships, associations, groups and committees.

SEC. 2-13.02 CONTRIBUTION LIMITATIONS FOR CANDIDATES ACCEPTING EXPENDITURE LIMITATIONS.

- (a) Notwithstanding Section 2-13.01, if a candidate accepts the expenditure limit set forth in section 2-13.00 (a) of this Article no person shall make to any candidate for City elective office, or the candidate's controlled committee, a contribution or contributions totaling more than one thousand dollars (\$1000) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- (b) Notwithstanding Section 2-13.01, if a candidate accepts the expenditure limit set forth in section 2-13.00 (a) of this Article, no candidate running for City elective office, or the candidate's controlled committee, shall accept a contribution or contributions totaling more than one thousand dollars (\$1000) per person for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.

SEC. 2-13.03 NOTIFICATION TO VOTERS.

The City Clerk shall prominently designate on the ballot, in the ballot pamphlet, and sample ballot those candidates who have voluntarily agreed to expenditure limits.

SEC. 2-13.04 ENFORCEMENT AND PENALTIES.

- (a) Any person who knowingly or willfully violates any provision of this Article is guilty of a misdemeanor.
- (b) In addition to other penalties provided by law, a fine of up to one thousand dollars (\$1,000) for each violation of this Article may be imposed.
- (c) Prosecution for violations of this title must be commenced within four years of the date on which the violation occurred.

SEC. 2-13.05 CIVIL LIABILITY FOR VIOLATIONS.

- (a) Any person who violates any provision of this Article shall be liable in a civil action brought by either the district attorney or independent counsel, appointed by the City Attorney, for an amount up to one thousand dollars (\$1,000) per violation of this Article.

- (b) No civil action alleging a violation of this Article may be filed against a person pursuant to this section if a criminal prosecution arising out of the same allegations is pending.

SEC. 2-13.06 VIOLATION OF TITLE; PROBABLE CAUSE; HEARING; NOTICE; ORDER.

- (a) If evidence of a violation of this Article is presented to the City Clerk, she/he shall consult with the City Attorney to determine if probable cause exists to either refer the matter to the District Attorney or appoint an independent counsel to serve as a hearing officer. Such hearing officer shall not be an employee of City.
- (b) In the event that the matter is referred to a hearing officer, notice shall be given and a hearing be conducted in accordance with the Administrative Procedures Act contained in the California Government Code. If the hearing officer determines on the basis of the hearing that a violation has occurred, a written order containing findings of fact shall be issued which may require the violator to:
- (1) Cease and desist violation of this Article;
 - (2) Pay a monetary penalty of up to one thousand dollars (\$1,000) per violation to the General Fund of the City.

If it is determined, after a hearing, that no violation of this Article has occurred, an order so stating shall be prepared.”

Section 2. In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 3. In accordance with the provisions of Section 620, subdivision (a), of the City Charter, this ordinance shall become effective upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of
Hayward, held the ____ day of _____, 2002, by Council Member_____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward
held the ____ day of _____, 2002, by the following votes of members of said City
Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: _____

Mayor of the City of Hayward

DATE: _____

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward